



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 7980-97

19 August 1999

SGT [REDACTED] CR

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Under title 10, section 1552(f)(2), the Board for Correction of Naval Records has no authority to remove your summary court-martial (SCM) conviction of 6 March 1992, but they did consider modifying your sentence as a matter of clemency. It is noted that your Official Military Personnel File does not include a fitness report concerning your SCM, so your request to remove such a report could not be considered.

A three-member panel of the Board, sitting in executive session, considered your application on 18 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Headquarters Marine Corps (HQMC) Military Law Branch (JAM4), dated 13 July 1998, the advisory opinion from the HQMC Performance Evaluation Review Branch, Personnel Management Division (MMER/RE), dated 29 July 1998, and the advisory opinions from the HQMC MMER, dated 10 September 1998 and 27 January 1999, copies of which are attached. They also considered your counsel's rebuttal letters dated 31 August and 8 October 1998.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to find that your sentence (reduction to sergeant, 45 days' restriction, and forfeiture of \$1,000.00 pay per month for one month, with that portion exceeding \$250.00 pay per month suspended for six months) was unduly harsh for the offenses

involved. In this regard, they noted your three prior nonjudicial punishments, which included the offenses of possession of alcoholic beverages in the barracks, violation of two lawful orders, breach of the peace, and driving while intoxicated.

The Board agreed with the advisory opinion dated 29 July 1998 in finding that your reenlistment code of RE-2C (transfer to the Fleet Marine Corps Reserve at maximum service limitation for grade) was correctly assigned.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
Bridget J. Wilson, Esq.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

13 JUL 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER SERGEANT [REDACTED]
[REDACTED] U.S. MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1995
Edition)

1. We are asked to provide an opinion regarding the appropriateness of a summary court-martial (SCM) imposed upon Petitioner on 6 March 1992. Petitioner argues that the SCM was unjust and disproportionate to the offenses committed. Petitioner requests that the SCM, and all related administrative matters, be removed from his official military records.

2. We recommend relief be denied. Our analysis follows.

3. The filing deadline for a BCNR application is 3 years from the date Petitioner discovered the alleged error or injustice. The SCM took place in 1992. While BCNR may waive the filing deadline, Petitioner fails to offer adequate justification for such a waiver in this case. Accordingly, Petitioner's application may be denied as untimely.

4. Petitioner was convicted by the SCM officer on 6 March 1992, of two orders violations pertaining to driving while intoxicated under Article 92, Uniform Code of Military Justice (UCMJ), and obstruction of justice pursuant to Article 134, UCMJ. The convening authority subsequently considered Petitioner's written matters in rebuttal and then approved the findings and sentence on 23 March 1992. Petitioner was also advised of his appellate rights pursuant to Article 69b of the reference.

5. On 17 March 1994, Petitioner appealed the SCM to the Judge Advocate General of the Navy. On 6 Jan 1995, the Judge Advocate General of the Navy denied Petitioner's appeal and determined "that the court had jurisdiction over the accused and the offense, that no error materially prejudicial to the substantial rights of the applicant was committed, and that the sentence is legal and appropriate." On 1 June 1995, Petitioner asked that his appeal be reconsidered. The Judge Advocate General of the Navy denied Petitioner's supplemental request, noting that Petitioner had not presented any newly discovered evidence.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER SERGEANT [REDACTED]
[REDACTED] U.S. MARINE CORPS

6. Petitioner presents no new information that disputes the evidence previously considered by the SCM officer, the convening authority, and the Judge Advocate General of the Navy on appeal. To the contrary, Petitioner raises virtually the same arguments that he raised in his earlier unsuccessful appeals. Accordingly, we concur with the Judge Advocate General of the Navy, and recommend that relief be denied.

[REDACTED]
Major, U.S. Marine Corps
Assistant Head
Military Law Branch
By direction of the
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

IN REPLY REFER TO:
1040
MMER/RE
29 Jul 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER SERGEANT
[REDACTED]

1. Mr. [REDACTED]'s record has been reviewed and it has been determined that the reenlistment code of RE-2C was correctly assigned. [REDACTED] reenlistment code was assigned based on his overall record and means that he was transferred to the Fleet Marine Corps Reserve (FMCR) at maximum service limitations for his grade. His record indicates that he was honorably discharged on October 25, 1994 by reason of Transfer to the FMCR. The disciplinary portion of his record shows that he received one Summary Court-Martial under the Uniform Code of Military Justice for offenses which included violating a lawful general order, and obstruction of justice. After a review of all relevant information, this Headquarters concurs in the professional evaluation of [REDACTED] qualifications for reenlistment at the time of separation. Once a code is correctly assigned it is not routinely changed or upgraded as a result of events that occur after separation or based merely on the passage of time.

2. The reenlistment code assigned by the Marine Corps is an administrative marking which reflects the member's acceptability for reenlistment at the time of separation from the Marine Corps. The code may, however, be waived at the discretion of the acquiring branch of service per their own policies and regulations.

3. I trust the foregoing will satisfactorily answer [REDACTED] inquiry.

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

7980-97



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO

1610
MMER
10 Sep 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER SERGEAN [REDACTED]

1. We have been asked to provide an Advisory Opinion on petitioner's implied request for the removal of a fitness report which documents the conduct of a summary court-martial in 1992.
2. No where on the performance ("P") section of petitioner's Official Military Personnel File (OMPF) is there a fitness report which documents the summary court-martial. There is a fitness report for the period 920101 to 920326 (TR) that may have recorded that action; however, the report is an incomplete document, with only page two, the Reviewing Officer's Certification, and the Third Sighting page available. There is simply no way to determine the content of the report.
3. In view of the foregoing, the PERB is not able to provide the requested Advisory Opinion.

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

798097



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610
MMER
27 Jan 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER SERGEANT [REDACTED]
[REDACTED]

Ref: (a) Telephone conversation btwn [REDACTED] (BCNR) and
the undersigned on 27 Jan 99

1. As discussed during the referenced conversation, the copy of page one of the report provided by [REDACTED] is only partially readable; initials of the Reviewing Officer are absent; and the copy has not been "certified true copy" by either the Reporting Senior or Reviewing Officer, nor has it been accepted into [REDACTED] official military record by the Personnel Management Support Branch (MMSB-32) of this Headquarters. Until such action is taken/completed, the report remains an incomplete document.

2. In view of the foregoing, the PERB is unable to review and comment on [REDACTED] fitness report for the period 920101 to 920326 (TR).

[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
Manpower and Reserve Affairs
Division
By direction of the Commandant
of the Marine Corps